IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 7655 of 2000

Between:

K. Lakshmi, W/o K.L.V. Prasad,
R/o Plot No.22, CBI Colony, Vanasthalipuram,
Hyderabad.

..... PETITIONER

AND

1 Sri Saraswathi Grameena Bank, rep. by its Chairman, Head Office at Adilabad, Adilabad District.
2 The Branch Manager, Sri Saraswathi Grameena Bank, Nirmal, Adilabad District.
3 The Union of India, rep. by its Secretary, Ministry of Finance, Department of Economic Affairs, (Banking Division), Sastry Bhavan, New Delhi - 110 001.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of 'Writ of Mandamus;" (a) declaring the Regulation 10(2) of Sri Saraswathi Grameena Bank (Staff) Service Regulations 1983 i.e., "2(a) The Bank may terminate the service of an (i) Officer after giving him three months' notice or emoluments in lieu thereof; (ii) employee after giving him one month's notice or emoluments in lieu thereof; 2(b) The power to terminate the services of an officer or employee shall be exercised by the Chairman" as unconstitutional and violative of Art. 14 and 21 of the Constitution of India: (b) declaring the action of the respondents in issuing the letter no. PER/626/98-99, dt. 1-9-1998 as violative of principles of natural justice, arbitrary, illegal and consequently direct the respondents to reinstate the petitioner with full back wages and continuity of service and all attendant benefits.

Counsel for the Petitioner: MR.G.RAMA GOPAL

Counsel for the Respondents 1 & 2 : Mr. K.Gopala Krishna Murthy
Counsel for the Respondent NO.3: Standing counsel for Central Government.

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 7655 of 2000

ORDER:

Heard Sri G.Rama Gopal, learned counsel appearing for the petitioner and Sri K.Gopala Krishna Murthy, learned counsel appearing on behalf of the respondents 1 and 2 and the learned standing counsel appearing on behalf of the third respondent.

The petitioner, who had been working with the respondents 1 and 2 herein, as a Manager, filed this Writ Petition, *inter alia*, seeking for a Writ of Mandamus challenging the validity of Rule 10(2) of Sri Saraswathi Grameena Bank (Staff) Service Regulations, 1983 (for short, 'the Regulation, 1983'), as unconstitutional and violative of Articles 14 and 21 of the Constitution of India, and also to declare the impugned order dated 01.09.1998 as bad, illegal and arbitrary and opposed to the principles of natural justice and consequently for a direction to reinstate her with full back wages and continuity of service with all other attendant benefits.

Though initially, a challenge was sought to be made against the validity of the aforesaid Regulation 10(2) of the Regulation, 1983, however, having regard to the decision of the Apex Court in

M.K.Agarwal v. Gurgaon Gramin Bank & others whereunder similar such provision of a Regional Rural Bank was held to be arbitrary and unconstitutional, the counsel on either side did not make any submissions on that aspect.

Restricting thus to the factual aspect, the case of the petitioner is that she was initially appointed as a Manager on 12.06.1985 and discharging her duties with the utmost satisfaction and there are no complaints of whatsoever nature against her. However, it is stated that she initially applied for leave on 15.06.1998 and 16.06.1998 as per the application dated 13.06.1998. She sought for extension of the same by telegram dated 22.06.1998 as she was not well. Later, she submitted another leave application on 02.07.1998 accompanied with medical certificate, for extension of leave up to 31.08.1998 on the ground of illness. Thereafter, once again, having regard to acute illness, the petitioner applied for extension of leave up to 30.11.1998 as per the letter dated 28.09.1998 accompanied with Doctors' certificate. This was further sought to be extended on the very same medical grounds till 31.01.1999 as per the application dated 04.01.1999, and followed by another letter dated 15.03.1999 seeking extension of the leave till 23.04.1999. It was stated that since the petitioner was carrying and gave birth to a child on 07.04.1999, she had to apply for maternity leave for further three months up to 07.07.1999. Even thereafter, since her condition was not restored to normalcy and requiring medical attention and treatment and also for the reason that even the child was not keeping well, she could not attend to duties up to 13.02.2000. Ultimately, she reported to duty by giving a joining report on 14.02.2000. However, it was stated that to her utter surprise, an endorsement was made on the said letter to the effect that as per the order dated 01.09.1998 from the Head Office, her services were terminated due to voluntary abandonment with effect from 17.06.1998 and she was advised to approach the Head Office. Accordingly, she approached the Head Office explaining all the reasons. However, she was informed that she was already

removed from service as per the order dated 01.09.1998 on the ground of voluntary abandonment with effect from 17.06.1998. To that effect, another letter dated 14.03.2000 was issued by the respondents. In the proceedings dated 01.09.1998, a reference was made to the notice issued to the petitioner on 01.07.1998 and on 14.07.1998. However, according to the petitioner, she did not receive any such notices nor there are any specific orders rejecting the leave or otherwise on the applications filed all along by her to her knowledge. Further, it is also pointed out that in the application filed by her on 28.09.1998, she has given all the reasons supported by medical certificates and therefore, reason for her absence is well within the knowledge of the respondents and they could not have treated the same as voluntary abandonment of service.

It was further pointed out that there could not be any voluntary abandonment of service in view of the fact that the respondents themselves issued call letter dated 20.04.1999 asking her to attend for interview for promotion to the post of MMGS-II from JMS-I, which was scheduled to be held on 4th and 6th May, 1999, and it is only due to her ill health, she could not attend the same. It is further stated that anyhow, the said interviews were postponed and the same were conducted later in January, 2000, at which time, her name was shown among the candidates eligible for promotion at sl. No.27. In view of the same, the impugned action on the part of the respondents treating the absence as voluntary abandonment is totally unsustainable. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the respondents 1 and 2, it is stated that having regard to the continuous absence on the part of the petitioner though she had applied for leave initially on 13.06.1998 and 06.10.1998, the other applications filed by her on 02.07.1998, etc. were not received by the respondents. Therefore, the respondents had to issue a letter dated 14.07.1998 calling upon the

petitioner to report to duty within 3 days thereafter and the petitioner failed to report to duty till 01.09.1998 leading to conclusion that she had abandoned her service with the respondents. The maternity ground or illness would not in any way help her since her services were already stood determined with effect from 01.09.1998. Therefore, it is clear case of petitioner's voluntary abandonment of services with effect from the said date, which has been reiterated by the respondents as per the letter dated 14.03.2000. The case of the respondents is that the petitioner never communicated her address other than the one which has been shown in the letters dated 01.07.1998 and 14.07.1998. The very absence of the petitioner without leave amounts to voluntary abandonment of service. Issuance of call letter dated 20.04.1999 to the petitioner would not in any way help the petitioner to say that she continues to remain in service. It was done only in the routine manner on the administrative side to all such eligible officers since her name was found therein. In the circumstances, it is stated that there are absolutely no merits in the Writ Petition and the same is liable to be dismissed.

Sri G.Rama Gopal, learned counsel appearing for the petitioner strenuously contends that the petitioner has been consistently making applications seeking for leave and extension thereof, and further even her absence is supported by well founded reason and ultimately, she gave birth to a child on 07.04.1999, which is well within the knowledge of the respondents and therefore, they could not have treated the absence as voluntary abandonment of service. Further, he contends that since no orders having been passed either refusing or acceding to the leave applications, it can not be said that there is any willful absence on the part of the petitioner. It is also further pointed out that having regard to the sufficiency of reason on the part of the petitioner, the charge of voluntary abandonment is a quite serious one and affects the substantive rights and there could not have been any determination or termination of service without holding an enquiry and providing opportunity to the petitioner.

Sri K.Gopala Krishna Murthy, learned counsel appearing on behalf of the respondents 1 and 2 submits that having now come up with challenge to the validity of Regulation 10(2) of the Regulations, 1983 and gone back, it is not open for the petitioner to wriggle out of the mischief as provided therein and she herself having absented from the duties continuously for such a long period, without any response even to the letter dated 14.07.1998 issued by the respondents, it is a clear case of voluntary abandonment of service and therefore, the action of respondents is well within the powers conferred under the aforesaid Regulation, to determine her service accordingly.

Considering the various submissions made across the bar from both the sides and on perusal of the material filed, the question which crops up for consideration is as to whether on the facts and circumstances, the respondents are right and justified in determining the services of the petitioner on the ground of voluntary abandonment?

The facts, which remain undisputed, are that the petitioner has been in service with the respondents and working as Manager at the relevant point of time. Though the petitioner has come out with regard to various applications filed seeking for leave since inception of the period involved and later extensions thereof including by way of telegram, however, there is no agreement to all such applications as mentioned by the petitioner from the respondents' side. However, admittedly, the petitioner sought initially leave as per the application dated 13.06.1998 on 15.06.1998 and 16.06.1998. There is no dispute in regard to the initial application filed by the petitioner on 06.10.1998 seeking extension of leave. However, the other applications filed by the petitioner including the telegram issued as mentioned above, are denied by the respondents. The case of the

petitioner is that in the later application filed by her on 02.07.1998 and on 28.09.1998, she sought extension of leave supported by medical certificates, which, however, according to the respondents, were not received by them. Instead, as per the respondents, they sent a letter on 14.07.1998 calling upon the petitioner to report to duty by 01.09.1998, to which the petitioner failed to respond. In view of the same, her continued absence without proper leave amounts to voluntary abandonment of service as contemplated under the said Regulation.

It is curious to note that the main reason shown on behalf of the petitioner for her absence is continuous illness. Further, she was carrying and pregnant. Ultimately, she gave birth to a child on 07.04.1999. The fact that she gave birth to a child on 07.04.1999 is not denied by the respondents. Apparently, even going back to the normal period of carrying, it can safely include a period of 9 months. Therefore, including the aforesaid period, the period for which the petitioner sought leave, stands extended from 15/16.06.1998 as per the initial application dated 13.06.1998. It is also the case of the petitioner that apart from her, even the later born child also was not doing well. These aspects were seriously disputed by the respondents in their counter affidavit. Ultimately, when she reported back to the duty on 14.02.2000, she was informed that her services were already stood terminated with effect from 01.09.1998 as per the head office letter dated 01.09.1998 treating it as voluntary abandonment of service. According to the petitioner, the notices alleged to have been given to her on 01.07.1998 and on 14.07.1998 were not received by her. Admittedly, no acknowledgement is forthcoming on behalf of the respondents in regard to service of aforesaid notices, much less for the orders dated 01.09.1998. It is very difficult to accept that especially when a woman is carrying and later gave birth to a child at the relevant point of time, there is any wilful act on her part to remain absent from duty. It is also curious to note that there is denial from both sides in regard to receipt of leave

application sent by the petitioner and also in regard to the communication as sent by the respondents to her. Apparently, there is some communication gap which resulted due to the fact that the petitioner was ill and carrying, and ultimately delivered a child on 07.04.1999. On these facts, it is quite clear and apparent that there is no wilful abstinence on the part of the petitioner. The fact that she was carrying and delivered a child is a concrete, valid and justifying reason for her absence, irrespective of the fact that there was any leave sought or sanctioned or not. Thus, there is no voluntary withholding of duties. No doubt, there can not be any justification for any employee for continuous absence in the absence of any proper leave or any reason. However, in this case, it can not be termed as voluntary abandonment of service. The ingredients for voluntary abandonment contemplate wanton absence with an intention not to go back and also without there being any valid reason on its part. None of these basic requirements is present here. The petitioner's absence for her duty is quite justifiable, which aspect was not kept in view by the respondents. When a plausible reason is forthcoming from the employee, the respondents can not remain silent and determine the services as voluntary abandonment, without any opportunity, especially where such formidable and uncontroversial reason is forthcoming. Necessarily, it contemplates holding an enquiry after giving due opportunity on framing of necessary charges on the required allegations. Without which, any such straight away action would not fit in the facts and circumstances. Further, it is quite clear from the correspondence in between them, that the case of the petitioner in regard to her maternity illness, remained unconsidered by the respondents. No attention has been paid in this regard nor there is any reason shown to doubt the same. Admittedly, no enquiry was initiated nor any opportunity is provided before taking any such serious punitive action. In the circumstances, it has to be held that the entire impugned action is not only arbitrary and illegal but also in the teeth of well laid principles.

The Writ Petition is, accordingly, allowed. The impugned order dated

01.09.1998 is set aside and the petitioner is directed to be reinstated immediately, but in the circumstances, with back salary only at 50%. It is, however, if so desired, open for the respondents to conduct proper disciplinary enquiry by providing due and sufficient opportunity to the petitioner and take appropriate action in accordance with law. No costs.

(B.Prakash Rao, J.)

07.03.2005

DRK

LR copy to be marked.

B.O.

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on Monday the seventh day of March two thousand and five.

… Registrar

Copy to:

One fair copy to the Hon'ble Mr. Justice B.Prakash Rao (For his Lordship's kind perusal).

1 The Chairman, Sri Saraswathi Grameena Bank, Head Office at Adilabad, Adilabad District.
2 The Branch Manager, Sri Saraswathi Grameena Bank, Nirmal, Adilabad

District.
3 The Secretary, Ministry of Finance, Department of Economic Affairs,
(Banking Division), Union of India, Sastry Bhavan, New Delhi - 110 001.

5 Two CD copies.

6 The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

7)The Secretary, A.P.Advocates' Association, Library, High Court buildings, Hyderabad.

8) 8 LR copies.